



BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Transfer of ETC Certification from American Cellular Corporation  
(ACC) to New Cingular Wireless PSC LLC (AT&T Mobility)

8212-TI-100

**FINAL DECISION**

This is the Final Decision in this proceeding to determine whether to transfer the designation of American Cellular Corporation (ACC), as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2), to New Cingular Wireless PSC LLC (AT&T Mobility). Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies. Subject to conditions, the Commission designates AT&T Mobility as an ETC.

**Introduction**

ACC filed an application for ETC designation on January 22, 2004. The Commission granted that designation by Order dated June 18, 2004, in docket 8206-TI-100. The Commission did not apply the ETC provisions contained in Wis. Admin. Code § PSC 160.13 to ACC. Instead, under Wis. Admin. Code § PSC 160.01(2)(b), it applied a different set of standards, which are commonly referred to as “federal only certification.”

On February 18, 2008, AT&T Mobility filed a petition to transfer the ETC designation held by ACC to AT&T Mobility because of AT&T Mobility’s acquisition of and pending merger with ACC. The petition would have had AT&T Mobility assume ETC status only in those areas where ACC had been certified as an ETC.

The Commission issued a Notice of Investigation and Request for Comments on April 11, 2008. Comments were received from the Wisconsin State Telecommunications

Association (WSTA) and from CenturyTel and TDS Telecom, filing jointly (TDS/CT). AT&T Mobility did not file a reply to the submitted comments. The Commission considered this matter at its open meeting on June 27, 2008.

### **Findings of Fact**

1. It is not reasonable to transfer ETC status from ACC to AT&T Mobility. However, it is reasonable to treat the petition of AT&T Mobility as a petition for ETC status.

2. The wireless industry, its customary practices, its usual customer base, AT&T Mobility's desire not to obtain state USF money, AT&T Mobility's merger with ACC, and AT&T Mobility's request for ETC designation only in areas where ACC was previously designated create an unusual situation.

3. It is reasonable to adopt different ETC requirements and obligations for AT&T Mobility than those specified in Wis. Admin. Code § PSC 160.13.

4. It is reasonable to require AT&T Mobility to meet only the federal requirements for, and to fulfill the federal ETC obligations of, ETC status.

5. It is reasonable to make the grant of ETC status to AT&T Mobility contingent on AT&T Mobility filing an affidavit certifying that AT&T Mobility will perform the duties required of an ETC. Once it does so, it will finish meeting the requirements for ETC designation.

6. It is reasonable and in the public interest to grant ETC status to AT&T Mobility in the non-rural wire centers for which ACC was designated as an ETC.

7. It is reasonable and in the public interest to grant ETC status to AT&T Mobility in the areas for which ACC was designated as an ETC and which include the entire territory of a rural telephone company.

8. It is reasonable and in the public interest to grant ETC status to AT&T Mobility in the areas for which ACC was designated as an ETC in exchanges served by a rural telephone company, but which do not include the entire territory of a rural telephone company, contingent upon the Federal Communications Commission (FCC) approving the use of the smaller areas.<sup>1</sup>

9. It is reasonable to require that AT&T Mobility not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall be applicable to it.

10. It is reasonable to treat the AT&T Mobility petition for transfer of ETC status from ACC to AT&T Mobility as a petition to surrender ETC status on behalf of ACC.

11. It is reasonable to grant the ACC petition to surrender ETC status.

### **Conclusions of Law**

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02 and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996, to make Findings of Fact and to issue this Final Decision.

2. ETC status is a designation granted by the Commission and is not an asset that can be bought, sold or transferred.

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<sup>1</sup> The Commission notes that ACC was granted ETC status in some partial wire centers. The question of whether to grandfather in the ETC designations for those areas is up to the FCC. See page 10.

### **Opinion**

On December 20, 2002, the Commission granted U.S. Cellular ETC status as applied for in docket 8225-TI-102. Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin, docket 8225-TI-102, (Wisconsin Public Service Commission, December 20, 2002). ACC filed an application for ETC designation on January 22, 2004. ACC's application was substantively similar to the application of U.S. Cellular. On June 18, 2004, the Commission reaffirmed its decision in docket 8225-TI-102 and relied on that opinion in issuing its Final Decision to approve ACC's application.

On February 18, 2008, AT&T Mobility filed a petition to transfer the ETC designation held by ACC to AT&T Mobility because of AT&T Mobility's acquisition of ACC. The Commission issued a Notice of Investigation and Request for Comments on April 11, 2008. Comments were received from WSTA and TDS/CT. AT&T Mobility did not file a reply to the submitted comments.

As an initial matter, the Commission finds that ETC status is a designation that it grants and is not an asset that can be bought, sold or transferred. As a result it will not transfer ACC's designation to AT&T Mobility. However, Wis. Admin. Code § PSC 160.13 does not require that an applicant for ETC status use a particular form or format in its application. Given the information provided by AT&T Mobility in its petition, the information provided in ACC's application, and other information in the Commission's records, it will treat AT&T Mobility's request as ACC's petition to surrender ETC status and AT&T Mobility's application for ETC designation.

ETC status was created by the FCC, and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, a state commission is required to designate a provider as an ETC. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b). Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that: “States may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” 47 U.S.C. § 254(f). A court upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999). A state must designate multiple ETCs if it is in the public interest and more than one provider meets the requirements and requests that status in a non-rural area. The Commission must determine that the designation is in the public interest before designating more than one ETC in a rural area. 47 C.F.R. § 54.201. However, the public interest test for non-rural areas can be less strict than it is for rural areas. The Commission has already designated at least one ETC in each rural area of the state.

In 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin. Wis. Admin. Code § PSC 160.13. Those rules govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission. The application filed by AT&T Mobility asks that it be designated as an ETC for federal purposes only. It states that it is not seeking designation as an ETC for state purposes and, therefore, requests that it not be required to meet the additional state requirements.

States must examine the federal requirements, but are allowed to create additional requirements. Wisconsin has done so. The Commission's requirements for ETC designation clarify and expand upon the more basic FCC rules. There is no provision in the rule for designation as an ETC for federal purposes only. If a provider seeks to be designated as an ETC, it must follow the procedures and requirements in Wis. Admin. Code § PSC 160.13 and, if such a designation is granted, that designation serves to qualify the provider for both state and federal universal service funding. However, Wis. Admin. Code § PSC 160.01(2)(b) provides that:

Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

The Commission finds that the wireless industry, its customary practices, and its usual customer base are quite different than those of wireline companies. Additionally, AT&T Mobility stated it has no desire to obtain state USF money. Further, AT&T Mobility's application is the result of its acquisition of ACC. The Commission finds that all these facts create an unusual situation. As a result, it is reasonable to adopt different ETC requirements and obligations for AT&T Mobility and to grant it ETC status, with certain limitations.

Because AT&T Mobility only wishes to obtain federal USF support, the Commission adopts the federal requirements for ETC status as the requirements that AT&T Mobility must meet to obtain ETC status. The federal requirements are found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. §§ 54.101(a), 54.405 and 54.411. Further, AT&T Mobility is relieved from ETC obligations other than those imposed under federal law. However, because AT&T Mobility is not subject to the state requirements and state obligations, AT&T Mobility may not apply for

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state USF money. If AT&T Mobility ever does apply for state USF money, then all of the state requirements for and obligations of ETC status will be applicable to AT&T Mobility.

In docket 8206-TI-100, the Commission found that ACC had met the federal requirements for ETC designation; it would offer supported service to all customers in its designation areas and would advertise these services. ACC submitted certification ensuring compliance.

AT&T Mobility has stated in its application that it will abide by the same requirements as ACC. However, AT&T Mobility has not submitted an affidavit to this effect. The Commission authorizes AT&T Mobility ETC designation contingent on AT&T Mobility filing an affidavit certifying that it will abide by all the federal requirements and duties of an ETC, including advertising of services as required under 47 U.S.C. § 214(e)(1)(B), which includes the availability of low-income programs. Once it has done so, it will have met all of the federal requirements for ETC designation.

#### **Public Interest Analysis and Designation Area**

In docket 8206-TI-100, the Commission determined that it was in the public interest to designate ACC as an additional ETC in the areas for which it petitioned for ETC status. In its determination, the Commission was guided by the public interest factors set forth in Wis. Stat. § 196.03(6):

- (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.
- (b) Promotion of consumer choice.
- (c) Impact on the quality of life for the public, including privacy considerations.
- (d) Promotion of universal service.
- (e) Promotion of economic development, including telecommunications infrastructure deployment.

- (f) Promotion of efficiency and productivity.
- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

The Commission found that designating ACC as an ETC in areas served by rural companies would increase competition in those areas and would therefore increase consumer choice. The Commission found that the availability of high-cost support for infrastructure deployment would allow ACC to expand its availability in these areas. Further, designation of another ETC may spur incumbent local exchange carrier (ILEC) infrastructure deployment and encourage further efficiencies and productivity gains. The Commission found that additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas would benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission authorized ACC the ETC designation in the areas served by rural telephone companies.

Designating AT&T Mobility in the same areas where ACC was so designated maintains a higher level of competition and consumer choice. It also should continue to spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. The continued infrastructure deployment, provision of new technologies, broader consumer choice, effects of competition, mobility option, and larger local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin.

In docket 8206-TI-100, the Commission found no indication that ACC had requested ETC status only in certain wire centers or portions of wire centers in an effort to obtain high-level subsidies for low-cost areas (often referred to as cream-skimming). Annual report data filed with the Commission showed that the requested exchanges and wire centers did not



show any pattern of being lower cost than other wire centers and exchanges served by the rural providers. Instead, the evidence appeared to indicate that ACC chose the areas for which it is requesting ETC status based on the areas in which it was licensed to operate. In reviewing the AT&T Mobility petition, the Commission reviewed updated annual report information, and still found no evidence of cream-skimming. The Commission finds that it is in the public interest to designate AT&T Mobility as an ETC in the areas for which it has requested such designation, with certain limitations.

AT&T Mobility has applied for transfer of ETC status for the areas in which ACC was designated as an ETC. This area included the entire study areas, or territories, of some rural providers, only some of the full wire centers of other rural companies, and just part of certain wire centers served by yet other rural companies. ACC was also designated an ETC for full wire centers and portions of wire centers in non-rural areas. The Commission grants ETC status to AT&T Mobility in the areas for which it is seeking designation for the entire territory of a rural telephone company, to the extent the areas are located in the state, and in the areas for which it is seeking designation in entire non-rural wire centers, to the extent the areas are located in the state. Designation for the other two situations, partial rural study areas and partial wire centers of any type, is more complicated.

The Commission conditionally grants ETC status where AT&T Mobility is asking for ETC designation in some, but not all, full wire centers in the territory of a rural ILEC, to the extent that such wire centers are located within the state. However, the applicants must apply to the FCC for approval of the use of a smaller area in such a designation as ACC did. 47 C.F.R. § 54.207(c)(1). If the FCC approves use of the smaller area, then the applicant's ETC status for

the smaller area becomes effective. If the FCC does not approve use of the smaller area, then conditional ETC status for the area is void. In that case, if the applicant determines that it then wants to apply for ETC status in the entire territory of the rural company, it may submit a new application requesting such designation.

The more complicated situations are those where ACC was designated as an ETC in partial wire centers. The Commission has, in the past, approved ETC status in partial wire centers and the FCC has approved them. ACC was one of the utilities that received such an approval. However, in its later orders, the FCC has stated that making designations for a portion of a wire center is inconsistent with the public interest. FCC 04-37, par. 33 and ETC Guidelines Order, par. 76-78. The question then is whether AT&T Mobility should be designated in those partial wire centers in which ACC was designated. Wis. Admin. Code § PSC 160.13(2) allows the Commission to designate ETCs in partial wire centers. However, the FCC has stated that it will not find such designations to be in the public interest when it reviews them. Since the partial wire centers are currently allowed under state law, these partial wire center designations are approved. The question of whether the designations should, essentially, be grandfathered in for AT&T Mobility based on their assignment to ACC will be left to the FCC. If the FCC approves use of the smaller area, then ETC status for the smaller area becomes effective. If the FCC does not approve use of the smaller area, then conditional ETC status for those areas is void. At that point, if it wishes, AT&T Mobility can reapply for these entire wire centers, serving the areas outside its wireless licensing footprint through resale.

**Order**

1. The designation of ACC as an ETC is hereby rescinded.
2. AT&T Mobility is granted ETC status in the non-rural wire centers for which ACC had been designated as an ETC.
3. AT&T Mobility is granted ETC status in the rural study areas for which ACC had been designated as an ETC where the designation included the entire territory of a rural telephone company.
4. AT&T Mobility is granted ETC status in the areas for which ACC had been designated as an ETC where the designation did not include the entire territory of a rural telephone company, but did include full wire centers, conditioned upon the FCC approving the use of the smaller areas. AT&T Mobility shall request such FCC approval.
5. Where AT&T Mobility has requested designation in areas smaller than a wire center, the Commission grants ETC status for the partial wire center, conditioned upon the FCC approving the use of the partial wire centers. AT&T Mobility shall request the required FCC approval.
6. If the FCC does not approve designation in areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then the conditional grant of ETC status in those areas is void.
7. If the FCC does not approve designation in partial wire centers, then the conditional grant of ETC status in those areas is void.

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8. AT&T Mobility shall not apply for state USF support. If it ever does file for such support, the state eligibility requirements for, and obligations of, ETC status shall immediately apply to it.

9. AT&T Mobility shall file an affidavit with the Commission certifying that it will perform the duties required of an ETC.

10. This Final Decision is effective upon the date of mailing.

Dated at Madison, Wisconsin, July 25, 2008

By the Commission:

  
Sandra J. Paske  
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

**PETITION FOR REHEARING**

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

**PETITION FOR JUDICIAL REVIEW**

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an untimely petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>2</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised July 3, 2008

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<sup>2</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.